United Nations A/CN.9/961

General Assembly

Distr.: General
20 June 2018

Original: English

United Nations Commission on International Trade Law
Fifty-first session
New York, 25 June–13 July 2018

Possible future work

Proposal by the Government of Belgium: future work for Working Group II

Note by the Secretariat

1. In preparation for the fifty-first session of the Commission, the Government of Belgium has submitted to the Secretariat a proposal in support of future work in the area of international commercial arbitration. The English version of that note was submitted to the Secretariat on 20 June 2018. The text received by the Secretariat is reproduced as an annex to this note in the form in which it was received.

V.18-04225 (E) 210618 220618

Please recycle

Annex

Proposal by the Government of Belgium

During its 51st Session, the Commission should finalize and adopt two draft instruments on international commercial settlement agreements resulting from mediation, on which its Working Group II has been working since September 2015. This finalization and this adoption raise the question of the future work of the Working Group II.

The Belgian Government shares the opinion, expressed in the proposal of the Governments of Italy, Norway and Spain (document A/CN.9/959 of 30 April 2018), that the Working Group II should devote its attention to the ways to increase the efficiency and quality of arbitral proceedings.

Since its establishment in 1966, the Commission has played a crucial role in promoting arbitration and the numerous instruments it adopted in this field constitute as many references with no equivalent at the global level.

In addition, the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, adopted on 10 June 1958 during the United Nations Conference on International Commercial Arbitration and whose sixtieth anniversary will be commemorated during this session of the Commission, remains the most successful international convention of private law and is of vital and daily importance for the international trade.

In this context, it appears that the Commission should give due consideration to the new challenges that arbitration is currently facing.

It is especially outstanding that those challenges include concerns that were expressed within the Commission itself, at the launch of its new works related to investment arbitration.

It seems therefore natural that the Commission, as the reference body for arbitration at the global level, considers with all due attention those concerns as well as the means of satisfactorily remedying them.

In the continuity of the aforementioned proposal of Italy, Norway and Spain (in particular No. 36 and 17 of document A/CN.9/959 of 30 April 2018), the Belgian Government would like to draw the attention in particular to the concerns which have been expressed as to the independence and impartiality of the arbitrators.

In 2010, the Commission adopted a revised version of its Arbitration Rules including the revised articles 11 to 13 on disclosures by and challenge of arbitrators and Model statements of independence.

It appears that, building on those achievements, the Commission could explore ways to consolidate and supplement those rules in order to associate arbitration with strong guarantees in this respect and enhance its status to the high level it deserves.

This could include the elaboration of additional legislative rules as to the composition of the arbitral tribunal and the arbitral proceedings and possibly, as far as this would be appropriate, as to the recourses against arbitral awards. As an example, the precise extent of the duty of the arbitrator to disclose circumstances and the legal status of the circumstances disclosed or not disclosed could probably be more elaborated.

In addition, this could also possibly take the form of rules on liability and of codes of conduct or guidelines for the arbitrators.

V.18-04225